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Attorney for Plaintiffs

**FEDERAL DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

BUBBE AND ZAYDE'S PLACE, INC.,
A CALIFORNIA CORPORATION, AND
BONNIE CURKIN, AN INDIVIDUAL

Plaintiffs,

vs.

BUBBIE AND ZADIE'S HOUSE, INC.,
A CALIFORNIA CORPORATION, AND
CARY KOPSTEIN AND MANNY KOPSTEIN,
INDIVIDUALS

Defendants.

COMPLAINT:

1. INFRINGEMENT OF A FEDERALLY
REGISTERED MARK UNDER THE
LANHAM ACT (TITLE 15 U.S. CODE)
2. INFRINGEMENT OF A MARK
REGISTERED IN THE STATE OF
CALIFORNIA UNDER B & P SECTION
14320 ET SEQ
3. UNFAIR COMPETITION UNDER B & P
SECTION 17200 ET SEQ AND FALSE
DESIGNATION OF ORIGIN UNDER
15 U.S.C. § 1125
EXHIBITs A-E

Comes now Plaintiffs Bubbe and Zayde's Place, Inc. (hereinafter "B & Z Place") and Bonnie Curkin and for their Complaint against Defendants Bubbie and Zadie's House, Inc. (hereinafter "B & Z House") and Cary and Manny Kopstein, do hereby allege and aver as follows:

COMPLAINT

BACKGROUND

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3 1. B & Z Place, Inc. is a California Corporation having as a principal place of business, the
4 address 2220 N. Concord Street, Santa Ana, California 92705-7125. B & Z Place was incorporated
5 in the State of California on or about January 1999 and has been licensed by the State of California
6 through its director Bonnie Curkin to conduct the services of resident care facilities for the elderly.

7 2. Bonnie Curkin is the founder and director of B & Z Place which she began as an
8 unincorporated sole proprietorship in 1998 under the common law trademark Bubbe & Zayde's Place
9 for resident care facilities. She filed for incorporation thereafter and her business became
10 incorporated under the B & Z Place name in January 1999.

11 3. On or about April 26, 2005 B & Z Place registered its service mark "Bubbe & Zayde's
12 Place" in the State of California. A copy of the Certificate of Registration No. 060574 is attached
13 herein as Exhibit A. The registration is for the services of "Resident Care Facilities for the Elderly".

14 4. On or about January 30, 2007, Bonnie Curkin registered the service mark "Bubbe And
15 Zayde's Place" on the principal register of the United States Patent and Trademark Office under
16 Registration No. 3,204,544. A copy of the Certificate of Registration of her service mark for the
17 services of Resident Care Facilities For The Elderly, Namely, Non-Medical, Round-The-Clock,
18 Nursing Home Services, in class 44 is attached hereto as Exhibit B.

19 5. On or about February 2007, Bonnie Curkin assigned her service mark "B and Z's Place"
20 under federal registration No. 3,204,544 and the goodwill associated with that mark to B & Z Place
21 to conduct services thereunder relating to Resident Care Facilities for the Elderly and included therein
22 the right to exploit the goodwill associated with the mark for those services and the right to enforce
23 the trademark rights associated with the registration against infringers thereof.

24 6. Defendant Manny Kopstein first came to the attention of Plaintiff Bonnie Curkin on or
25 about April 2005 when he arrived at Plaintiffs' business and expressed a desire to have his elderly
26 mother admitted to one of the elderly care facilities of Plaintiff B & Z Place in Orange County,
27 California. At that time, Mr. Kopstein openly expressed his intent to start a similar facility in
28 Northern California under the Bubbie & Zadie's Place service mark. Mr. Kopstein was then
expressly warned in writing not to do so in a letter from the Plaintiffs' attorney Leonard Tachner and
a copy thereof is attached hereto as Exhibit C.

COMPLAINT

1 7. Sometime in early April, 2006, Plaintiffs learned that Defendants Manny and Cary
2 Kopstein had indeed started a resident care facility for the elderly in this judicial district at 777
3 Montecillo Road, in San Rafael, California 94903 under the confusingly similar name "Bubbie &
4 Zadie's House" and had incorporated their business under the name Bubbie & Zadie's House, Inc. in
5 the state of California. Shortly thereafter, in response to threats of infringement litigation, the
6 Kopsteins, through their attorney James W. Kinnear of Holme Roberts & Owen, LLP of San
7 Francisco informed Plaintiffs' counsel Leonard Tachner that the Kopsteins had decided to cease and
8 desist from use of their confusingly similar trademark and change their name (see Exhibit D attached
9 hereto). However, to this date, Defendants continue to use their infringing service mark in this
10 Court's judicial district.

11 JURISDICTION AND VENUE

12 8. Jurisdiction is proper in this District Court under title 28 U.S.C. § 1331 and 1338. Venue is
13 proper under title 28 U.S.C. § 1391(b).

14 FIRST CAUSE OF ACTION

15 TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1117 ET SEQ

16 9. Plaintiffs hereby repeat and incorporate by reference paragraphs 1 through 8 as if fully set
17 forth herein.

18 10. Defendants knowing full well of Plaintiffs' prior rights, have intentionally used and
19 continue to intentionally use a service mark which is likely to cause public confusion and has actually
20 caused public confusion with Plaintiffs' federally registered mark. Such use constitutes trademark
21 infringement under title 15 U.S.C. § 1111 et seq which infringement is intentional and willful and for
22 which Plaintiffs are entitled to injunctive and monetary relief including treble damages and attorneys
23 fees and costs. Without such remedies, Plaintiffs shall continue to suffer irreparable harm.

24 SECOND CAUSE OF ACTION

25 TRADEMARK INFRINGEMENT UNDER CALIFORNIA B & P CODE SECTIONS

26 11. Plaintiffs hereby repeat and incorporate by reference paragraphs 1 through 10 as if fully
27 set forth herein.

28 COMPLAINT

1 12. Defendants knowing full well of Plaintiffs' prior rights have intentionally used and
2 continue to intentionally use a service mark which is likely to cause public confusion and has actually
3 caused public confusion with Plaintiffs service mark that is registered in the state of California. Such
4 use constitutes trademark infringement under California Business and Professions Code Section
5 14320 et seq for which Plaintiffs are entitled to injunctive and monetary relief including treble
6 damages and attorneys fees and costs. Without such remedies, Plaintiffs shall continue to suffer
7 irreparable harm.

8 **THIRD CAUSE OF ACTION**
9 **STATUTORY UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN**

10 13. Plaintiffs hereby repeat and incorporate by reference paragraphs 1 through 12 as if fully
11 set forth herein.

12 14. Defendants, acting both jointly and individually, have intentionally and unfairly offered
13 services at their resident care facility for the elderly under a deceptively similar trademark in order to
14 unfairly exploit the goodwill and reputation of the Plaintiffs to the general public. Such intentionally
15 unlawful and deceptive conduct includes use of a web site address (www.bubbie-zadieshouse.com)
16 and an advertising brochure (see Exhibit E attached hereto) which play off the long-established
17 reputation for high quality elderly care services developed by Plaintiffs in the State of California under
18 their service mark and the common law and statutory rights thereunder.

19 15. These unfair, unlawful and intentionally deceptive acts of the Defendants are within the
20 definition of Unfair Competition of California Business and Professions Code Section 17200 for
21 which remedies of injunctive relief and restitution are available under Section 17203 thereof.
22 Moreover, such activities of Defendants constitute false designation of origin in direct violation of
23 Title 15 U.S.C. § 1125 entitling Plaintiffs to remedies thereunder.

24 **RELIEF SOUGHT BY PLAINTIFFS**

25 For their relief from injuries that are a direct and proximate result of the aforementioned
26 wrongful acts of Defendants, Plaintiffs seek judgment from this Court as follows:

27 1. That Defendants be held jointly and severally liable for intentional infringement of
28 Plaintiffs' state and federally registered service mark and for statutory unfair competition and false

1 designation of origin.

2 2. That Defendants be required to provide an accounting for and to pay to Plaintiffs damages
3 in a sum no less than their entire profits from their intentional infringement of Plaintiffs' service mark.

4 3. That such damages be trebled due to Defendants' intentional and willful wrongdoing and
5 lack of good faith.

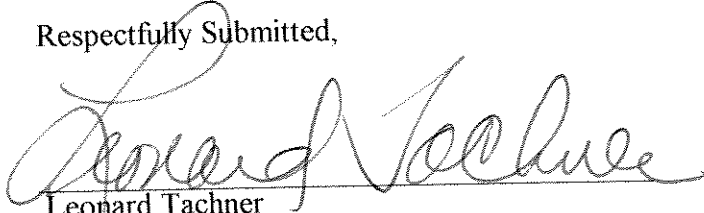
6
7 4. That Defendants and their partners, principals, associates, employees, attorneys, assignees
8 and licensees be preliminarily and permanently enjoined from using, displaying, advertising and
9 otherwise employing their infringing service mark and trade name, web site address, etc. and any and
10 all colorable imitations or confusing similar versions thereof in conducting services of elderly care.

11 5. That Defendants be required to reimburse Plaintiffs for all reasonable attorneys fees and
12 costs in bringing and prosecuting this Action.

13 6. Such other relief which this Court may deem just and proper.

14
15 Respectfully Submitted,

16
17 Dated: 9/10/07


18 Leonard Tachner
19 Counsel for Plaintiffs
20 BUBBE AND ZAYDE'S PLACE, INC. AND
21 BONNIE CURKIN
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State of California
Secretary of State

Service Mark Reg. No. 060574 Class No. INT 42
CERTIFICATE OF REGISTRATION OF SERVICE MARK

I, **BRUCE McPHERSON**, Secretary of State of the State of California, hereby certify:

That in accordance with the application filed in this office the **SERVICE MARK** described below has been duly registered in this office on behalf of:

Name of Applicant: Bubbe & Zayde's Place, Inc.
Business Address: 2220 North Concord, Santa Ana, CA 92705
Date First Used in California: November 18, 1998
Date First Used Anywhere: November 18, 1998
Description of Service Mark: BUBBE & ZAYDE'S PLACE
Description of Services with Which the Service Mark is Used: Resident care facilities for the elderly
A copy, specimen, facsimile, counterpart or a reproduction of the mark is attached
Date of Registration: April 26, 2005
Term of Registration Extends to and Includes: April 26, 2015



IN WITNESS WHEREOF, I execute
this certificate and affix the Great
Seal of the State of California this
3rd day of May, 2005.

BRUCE McPHERSON
Secretary of State

Int. Cl.: 44

Prior U.S. Cls.: 100 and 101

Reg. No. 3,204,544

United States Patent and Trademark Office

Registered Jan. 30, 2007

SERVICE MARK
PRINCIPAL REGISTER

BUBBE AND ZAYDES PLACE

CURKIN, BONNIE (UNITED STATES INDIVIDUAL)
2220 CONCORD STREET
SANTA ANA, CA 92705

FOR: RESIDENT CARE FACILITIES FOR THE ELDERLY, NAMELY, NON-MEDICAL, ROUND-THE-CLOCK, NURSING HOME SERVICES, IN CLASS 44 (U.S. CLS. 100 AND 101).

FIRST USE 11-18-1998; IN COMMERCE 10-1-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

THE NAME BUBBE AND ZAYDE IN THE MARK ARE TERMS FOR "GRANDMOTHER" AND "GRANDFATHER" AND DO NOT IDENTIFY NAMES OF LIVING INDIVIDUALS.

SN 78-619,433, FILED 4-28-2005.

THEODORE MCBRIDE, EXAMINING ATTORNEY

LEONARD TACHNER
A PROFESSIONAL LAW CORPORATION
REGISTERED PATENT ATTORNEY
17961 SKY PARK CIRCLE
SUITE 38-E
IRVINE, CALIFORNIA 92614-6364

APRIL 7, 2006

PATENTS
TRADEMARKS
COPYRIGHTS

TEL: (949) 752-8525
FAX: (949) 955-2415

Ms. Cary Kopstein
Bubbe & Zayde's House
777 Montecillo
San Rafael, CA 94903

Re: Infringement of Registered Service Mark
Our Docket No. **BZP-4**.

Dear Ms. Kopstein:

I represent Bubbe & Zayde's Place, Inc. of Santa Ana, California. It has been brought to my attention that you have recently opened your resident care facility for the elderly under the above-captioned name. My client's name was registered in the State of California on April 26, 2006 under Service Mark Registration No. 060574. A copy of their Certificate of Registration of Service Mark is enclosed.

In my opinion your use of "Bubbe & Zayde's House" for identical services is likely to cause public confusion with my client's registered service mark "Bubbe & Zayde's Place" and is therefore an infringement of my client's trademark rights. Under California's Business and Professions Code Section 14200 et seq., such infringement of a duly registered mark is actionable for injunctive relief and monetary damages up to three times profits from and damages from wrongful use. (See B & PC § 14340).

In this particular case, we have ample evidence that at least a year ago Mr. Kopstein was fully aware of my client's prior use of its service mark in California. Therefore, in my opinion we can show that your wrongful use of an infringing mark was undertaken as an intentional and willful exploitation of my client's good will and reputation based upon its prior and continuous use of its mark over the last five and a half years in the State of California. In view of such blatant intentional trademark infringement, if it is necessary to seek statutory remedies in a civil action, I believe that my client would be entitled to recover of the full measure of damages permitted under California law.

Ms. Cary Kopstein
Bubbie & Zaidie's House

Page 2

April 7, 2006

In view of the above, by this letter we demand that you immediately cease and desist from any and all use, display, advertising and selling of services under the Bubbie & Zaidie's House mark for resident care services, as well as from any such action involving any other confusingly similar mark and including corporate name use and internet use thereof.

My client has authorized the filing of a civil action if we do not receive your immediate indication of prompt and unconditional acquiescence to these demands. Therefore, if you wish to avoid such litigation, I advise you to expeditiously seek advice of trademark counsel and have him respond to this letter without delay.

Very truly yours,

A handwritten signature in black ink, appearing to read "Leonard Tachner", with a long horizontal flourish extending to the right.

Leonard Tachner
Attorney at Law

LT/jm

Encl.

cc: Bubbe & Zayde's Place, Inc.



Holme Roberts & Owen LLP
Attorneys at Law

SAN FRANCISCO

Via U.S. Mail

July 3, 2006

BOULDER

Leonard Tachner
17961 Sky Park Circle
Suite 38-E
Irvine, CA 92614-6364

COLORADO SPRINGS

Re: Bubbie & Zadie's House

Dear Mr. Tachner:

DENVER

I have your letter of June 27, 2006. Mr. Kopstein informs me that they have submitted their name change to the California Secretary of State, and they are awaiting confirmation of the name change. The phone answering will be changed shortly. They are working with their web consultants on how best to change the names on the website to minimize disruption.

LONDON

Please do not hesitate to contact me with any questions.

Very truly yours,

LOS ANGELES


James Wesley Kinnear

MUNICH

SALT LAKE CITY

EXHIBIT D
(Page 1 of 1)

10

Bubbie & Zadie's House

Intimate Personalized Assisted Living in a Private Home Setting

777 Montecillo Road, San Rafael, CA 94903

www.bubbie-zadieshouse.com

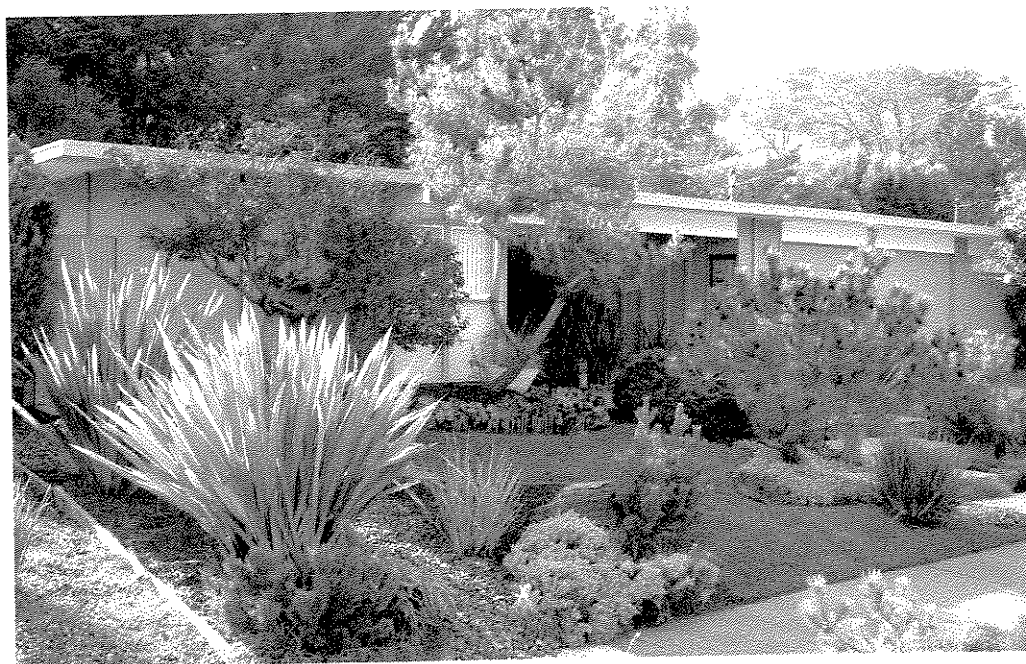
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EXHIBIT E
(Page 1 of 2)

Bubbie & Zadie's House

Intimate Personalized Assisted Living in a Private Home Setting

A private residential care setting honoring Jewish traditions nurturing the physical, intellectual, emotional, social & spiritual needs of residents in a healthy, safe and supportive environment.



Calif. License #216801830

Mission Statement

Bubbie & Zadie's House pledges to enhance the quality of life of each of our residents through personalized caregiving and stimulating daily activities in a family environment. By fostering individual decision-making in matters of daily living, we honor each resident's individuality and uniqueness.

Bubbie & Zadie's House Amenities, Programs & Services

- * Private Secure Home Setting with Maximum 6 Residents
- * 24/7 Supervised Care with High Ratio of Staff : Residents
- * Assistance with Meals, Medications, Dressing, Bathing and Grooming
- * Transportation to Medical/Dental Appointments
- * Complete Kosher Kitchen
- * Sabbath / Holiday Services & Meals for the Entire Family
- * Spacious, Cheerful Dining Facilities
- * Private and Semi-Private Rooms
- * Water Exercise; Therapeutic Swim as Medically Advised
- * Laundry, Linen, Housekeeping Services
- * Large Patio and Green Space for Privacy & Relaxation
- * Computer, Music, Dance, Exercise, Piano
- * Current Events and Discussion Forums
- * Hand/foot Massage; Therapeutic Massage as Medically Advised
- * Special Trips: JCC, Synagogues, Theatre, Movies, Ballet, Music and Dance
- * Restaurant and Shopping Outings
- * Internet Access and Instruction
- * Individual Gardening Areas
- * A Rich Array of Jewish Social, Cultural & Spiritual Activities
- * Cooperative Programming with other Assisted Living Residences in Marin County

Our Team

The management/administrative team at Bubbie & Zadie's House has over 25 years combined experience in caregiving and in operating assisted-living facilities throughout the United States and Israel. Each staff member is professionally trained and experienced in providing the highest standard of elder care. Our primary goal is the preservation of personal dignity and the fostering of residents' participation in a range of healthful, stimulating daily activities.



Advisory Board

Rabbi Lavey Derby - Congregation Kol Shofar, Tiburon, CA

Rabbi Stacy Friedman - Congregation Rodef Sholom, San Rafael, CA

Dr. Michael D. Fox (Qualification in Geriatric Medicine; Certified in Emergency Medicine)

Isaac Chernotsky, Ph.D - Consultant

Colette Lee, R.N.

To speak with the Administrator and for information on pricing and availability, contact:

Bubbie & Zadie's House, Inc.
777 Montecillo Road; San Rafael, CA 94903

E-Mail: BubbieZadieHouse@aol.com Internet: www.bubbie-zadieshouse.com
Office Phone: 415-435-1395 House Phone: 415-492-8390 Facsimile: 415-435-1762

Our Values

- * Foster Self-worth and Dignity
- * Promote Interaction with Community
- * Enhance Quality of Life through Dynamic, Stimulating Programs